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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**
10

11 UNITED STATES OF AMERICA,

Case No. CV 08 3413

12 Plaintiff,

Complaint Filed: July 15, 2008

13 v.

**~~PROPOSED~~ ORDER ACCEPTING
STIPULATION AS TO LIEN
PRIORITY BETWEEN THE
UNITED STATES OF AMERICA,
CALIFORNIA FRANCHISE TAX
BOARD AND BANK OF AMERICA**

14 JOHN & NANCY BENNETTS; JOHN F.
BENNETTS; THE CALIFORNIA
15 FRANCHISE TAX BOARD; and BANK
OF AMERICA,

16 Defendants.
17

18 Pursuant to the Stipulation as to Lien Priority entered into between Plaintiff, THE
19 UNITED STATES OF AMERICA ("United States"), and Defendants CALIFORNIA
20 FRANCHISE TAX BOARD ("FTB) and BANK OF AMERICA ("B of A"),

21 IT IS HEREBY ORDERED:

22 1. The United States may seek

23 (a) entry of money judgments against Defendants JOHN and NANCY
24 BENNETT;

25 (b) declarations that the United States has valid and subsisting liens on all
26 property and rights to the property located at 25880 Rancho Alto, Carmel Valley, California
27 ("Subject Property"), with the following legal description:

28 ///

Lot 17 in Tract No. 423 Rancho Tierra Grande
 Subdivision No. 1, filed January 8, 1963 in the office of
 the County Recorder of the County of Monterey, State
 of California, in Map Book 7, Cities and Towns. property
 of Defendants JOHN and NANCY BENNETTS; and,

(c) judicial foreclosure of the federal tax liens on the Subject Property. By
 virtue of 26 U.S.C. 6323(a), the federal tax liens against the Subject Property are subordinate
 to the security interest held by B of A.

2. Upon request by the United States, B of A will provide payoff information
 regarding the mortgage on the Subject Property pursuant to California Civil Code Section
 2943.

3. The proceeds from the sale of the Subject Property will be used to pay the
 claim of B of A before they are used to satisfy the claim of the United States and the claim
 of the California FTB.

4. The lien priorities between the United States and the FTB are as follows: the
 payoffs for the IRS liens, including penalty and interest, are computed to March 31, 2008; FTB
 payoffs, including penalty and interest, are computed through August 20, 2008, plus interest
 accruing thereafter, and; the IRS and FTB payoffs do not include interest accruing after the
 payoff computation dates.

<u>Assessment Type</u>	<u>Amount</u>	<u>Assessment Date</u>
FTB 1992 TY	\$ 39,741.45	02/01/1995
FTB 1993 TY	4,718.97	02/02/1995
IRS 1992/93 TY	332,436.64	02/13/1995
IRS 1991 TY	180,707.70	02/20/1995
IRS CIV PEN	11,350.50	06/17/1996
FTB 1996 TY	2,207.27	06/02/1998
FTB 1997 TY	48,248.94	04/11/1999
FTB 1998 TY	37,228.05	11/05/1999

1	IRS 1998 TY	136,262.63	11/22/1999
2	FTB 1999 TY	22,460.53	10/04/2000
3	IRS 1999 TY	98,554.13	10/09/2000
4	IRS 0601 941/200106	2,524.04	09/03/2001
5	IRS 1200 941/200012	2,090.27	10/01/2001
6	IRS 0901 941/200109	11,244.58	12/17/2001
7	IRS 1201 941/200112	1,203.00	03/18/2002
8	IRS 2000 TY	16,532.95	11/18/2002
9	IRS 2002 TY	55,519.34	11/24/2003
10	FTB 2003 TY	21,168.60	02/25/2005
11	FTB 2004 TY	30,584.82	01/20/2005
12	IRS 2004 TY	167,271.68	08/08/2005
13	IRS 2003 TY	100,269.69	08/15/2005

14 5. Prior to filing an application for final order of the Court, the United States agrees
15 to provide an accounting to B of A setting forth the full disposition of the proceeds from the
16 sale of the Subject Property.

17 6. B of A agrees to be bound by the judgment of the Court as to the right of the
18 United States to judicially foreclosure on its federal tax liens.

19 7. The United States agrees to bear its own costs and attorney's fees as against B of
20 A, and B of A agrees to bear its own costs and attorney's fees as against the United States.

21 8. B of A need not actively participate further in these legal proceedings upon the
22 execution, filing and Court's acceptance of this Stipulation.

23 5/22/09

24 Dated: _____



RICHARD SEEBORG, MAGISTRATE JUDGE
U. S. DISTRICT COURT, NORTHERN DISTRICT
OF CALIFORNIA